

**Before the
Administrative Hearing Commission
State of Missouri**

SARA CAREY,)	
)	
Petitioner,)	
)	
vs.)	No. 13-2062 DI
)	
DIRECTOR OF THE DEPARTMENT OF)	
INSURANCE, FINANCIAL INSTITUTIONS)	
AND PROFESSIONAL REGISTRATION,)	
)	
Respondent.)	

DECISION

We dismiss Sara Carey’s complaint for lack of jurisdiction.

Procedure

The Director of the Department of Insurance, Financial Institutions and Professional Registration (“Director”) refused to renew Carey’s application for a license. On December 2, 2013, Carey filed a complaint appealing the refusal to renew. On May 28, 2014, the Director filed a motion to dismiss or in the alternative, motion for summary decision and suggestions in support, stating that Carey filed the complaint too late. On June 12, 2014, Carey filed her response to the motion.

Findings of Fact

1. Carey applied for renewal of her insurance producer license.
2. The Director refused to renew her license.
3. On Monday, October 28, 2013, Carey received the Director’s order refusing to renew her license.

4. On Friday, November 29, 2013, Carey transmitted her complaint by facsimile. Because it was transmitted on a legal holiday, the complaint was filed on Monday, December 2, 2013, the Commission's next business day.

5. The thirtieth day after Monday, October 28, 2013 was Wednesday, November 27, 2013, which was not a legal holiday.

Conclusions of Law

We have no jurisdiction to hear a petition filed out of time.¹ If we have no jurisdiction to hear the petition, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.² The Supreme Court, in *R.B. Industries v. Goldberg*,³ held that the filing deadline is determined by the date of mailing or delivery, whichever occurs sooner.

The Director argues that we do not have jurisdiction to hear Carey's complaint because she did not file it within the time period set by § 621.120:⁴

Upon refusal by any agency listed in section 621.045 to permit an applicant to be examined upon his qualifications for licensure or upon refusal of such agency to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination, such applicant may file, **within thirty days after the delivery or mailing by certified mail of written notice of such refusal to the applicant**, a complaint with the administrative hearing commission.

(Emphasis added.)

Failure to comply with the statutory time limitations for appeal from an administrative agency decision results in the lapse of subject matter jurisdiction and loss of the right of appeal.⁵ We cannot decide claims filed outside the statutory time limit.⁶

¹ *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc), *cert. denied*, 488 U.S. 893 (1988).

² *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

³ 601 S.W.2d 5, 7 (Mo. banc 1980).

⁴ Statutory references are to the 2000 Revised Statutes of Missouri.

⁵ *Daly v. Warner-Jenkison Mfg. Co.*, 92 S.W.3d 319, 322-23 (Mo. App., E.D. 2002) (citing *Fayette No. 1, Inc. v. Missouri Dep't of Soc. Servs.*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1992)).

⁶ *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1983).

We determine the date that Carey filed her complaint according to § 621.205, which provides:

1. For the purpose of determining whether documents are filed within the time allowed by law, documents transmitted to the administrative hearing commission by registered mail or certified mail shall be deemed filed with the administrative hearing commission as of the date shown on the United States post office records of such registration or certification and mailing. **If the document is sent by any method other than registered mail or certified mail, the administrative hearing commission shall deem it to be filed on the date the administrative hearing commission receives it.**

(Emphasis added.) Regulation 1 CSR 15-3.290 also provides:

(1) A party may file a document by—

* * *

(B) Electronic Facsimile Transmission (Fax). **A document filed by fax is deemed filed at the time the commission receives a fax of the document. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday or legal holiday, it is filed on the commission's next business day,** unless the commission orders otherwise[.]

(Emphasis added.) Although she faxed the complaint to this Commission on Friday, November 29, 2013, a legal holiday, Carey's complaint was deemed filed on Monday, December 2, 2013 because that was the first business day after we received it by facsimile. December 2, 2013 was more than thirty days after October 28, 2013.⁷ Therefore, Carey filed the complaint beyond the time allowed to appeal.

Because § 621.120 makes no provision for late filing and does not recognize any exceptions for filing out of time, we must dismiss Carey's appeal.⁸

⁷ The Director's evidence regarding the date of delivery consists of unauthenticated responses to discovery that Carey submitted to the Director. Normally we require some type of authentication, such as an affidavit, to accompany such responses. However, because Carey admitted to the date of delivery in her response to the motion, we find the Director met his burden regarding the date of delivery.

⁸ *Thomas v. St. Martin's Childcare Center*, 127 S.W.3d 704 (Mo. App., E.D. 2004).

Summary

We have no jurisdiction to hear Carey's complaint because she filed it beyond the thirty days allowed by § 621.120. We grant the Director's motion to dismiss and cancel the hearing.

SO ORDERED on June 18, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner